

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**  
Norfolk Division

LEON PARRISH MARSHALL, #1072590,

Petitioner,

v.

Civil Action No. 2:21cv237

HAROLD W. CLARKE,  
Director of the Virginia Department  
of Corrections,

Respondent.

**FINAL ORDER**

Petitioner Leon Parrish Marshall (“Marshall”), a Virginia inmate, has submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. Marshall challenges his 2001 convictions in the Circuit Court for the County of Lunenburg for rape and two counts of aggravated sexual battery. *Id.* at 2; *see Commonwealth v. Marshall*, Nos. CR00000106-00, CR00000108-00, CR00000162-00 (Va. Cir. Ct. June 4, 2001). Marshall was sentenced on June 4, 2001, to 15 years in the Virginia penal system. *Commonwealth v. Marshall*, Nos. CR00000106-00, CR00000108-00, CR00000162-00 (Va. Cir. Ct. June 4, 2001).

Marshall has previously filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in this Court challenging the same convictions. *Marshall v. Johnson*, No. 2:06cv515 (E.D. Va. July 10, 2007), ECF No. 1. The petition was denied and dismissed on July 10, 2007. *Id.*, ECF Nos. 14, 15. The United States Court of Appeals for the Fourth Circuit dismissed Marshall’s appeal of the decision on October 19, 2007. *Id.*, ECF Nos. 19–21.

Marshall's current petition is a successive section 2254 petition. Pursuant to 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." On August 31, 2021, the Court of Appeals for the Fourth Circuit denied Marshall's motion for an order authorizing the district court to consider a second or successive application for relief under 28 U.S.C. § 2254. Therefore, this Court may not consider Marshall's application for a writ of habeas corpus.

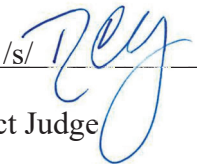
The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Report and Recommendation, filed July 21, 2021, recommends that Marshall's petition be dismissed without prejudice to Marshall's refiling his federal petition after obtaining an order authorizing the filing of a successive petition from the Court of Appeals for the Fourth Circuit. ECF No. 5, at 2. Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. *Id.* at 3. On August 2, 2021, Marshall indicated he "does not have any objections to the dismissal without prejudice" of his petition. ECF No. 7, at 1.

The Court does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation. The Court, therefore, **ORDERS** that Marshall's successive section 2254 petition, ECF No. 1, is **DISMISSED WITHOUT PREJUDICE**.

Marshall has failed to demonstrate "a substantial showing of the denial of a constitutional right," and, therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003).

Marshall is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Marshall intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Final Order. Marshall may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk shall mail a copy of this Final Order to Marshall and counsel of record for respondent.

/s/   
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Roderick C. Young  
United States District Judge

Richmond, Virginia  
September 10, 2021